

DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

HANOVER MOTORS LIMITED o/a HANOVER CHRYSLER DODGE JEEP

- AND -

DONNA FLETCHER

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: November 24, 2014

Findings: Breach of Sections 4, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000. The first \$1000 of this fine is due within 30 days of the Discipline Committee Order and the remaining balance of \$4000 is due within 120 days of the date of the Discipline Committee Order.
2. Fletcher is ordered to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The General Manager in charge of sales is ordered to complete the course within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
4. The Dealer is ordered to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is

understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.

5. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

Reasons for Decision

Introduction

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

1. Hanover Motors Limited o/a Hanover Chrysler Dodge Jeep (the "Dealer") was first registered as a motor vehicle dealer in or around April 1983. Donna Fletcher ("Fletcher") was first registered as motor vehicle salesperson in or around June 2006. At all material times, Fletcher was an officer of the Dealer.

All-In-Pricing and Accident Repair History Background

2. In the winter of 2008 and the spring of 2009, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, such as all-in-pricing advertising rules. In addition to this, dealers were reminded of their obligations to provide consumers with written disclosure of vehicle's history and condition, such as accident repair history.
3. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of their obligations under the Act, such as the new all-in-pricing advertising rules. In addition to this, dealers were reminded to provide consumers with written disclosure of vehicle's history and condition, such as accident repair history:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Summer 2011
 - e. Summer 2012
 - f. Spring 2013
 - g. Fall 2013
 - h. Winter 2013

4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their obligations under the Act, such as the new all-in-pricing advertising rules. In addition to this, dealers were reminded to provide consumers with written disclosure of vehicle's history and condition, such as accident repair history.
 - a. December 2008
 - b. January 2010 (3 separate publications)
 - c. April 2010 (2 separate publications)
 - d. February 2012
 - e. September 2012
 - f. December 2013

Accident Repair History

5. On or about September 16, 2014, the Dealer purchased a 2007 Dodge RAM 3500 (VIN 3D7MX49C27G712572), declared as an accident repaired vehicle. On or about November 13, 2013, the Dealer sold this vehicle and failed to provide the purchaser with written disclosure of the \$7,408 accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided confirmation that the purchaser was verbally informed of the accident repair history at the time of purchase.
6. On or about November 8, 2013, the Dealer purchased a 2006 Dodge Charger SXT (VIN 2B3KA43G06H533946), declared as an accident repaired vehicle. On or about January 15, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure of the \$5,462 accident repair history. This is contrary to section 42(19) of Regulation 333/08, as well as sections 7 and 9 of the Code of Ethics. The Dealer has subsequently provided confirmation that the purchaser was verbally informed of the accident repair history at the time of purchase.

All-In-Pricing

7. On or before January 9, 2014, an advertisement was placed by or on behalf of the Dealer for a 2009 Dodge RAM 1500, Stock # 14-148A, with a sale price of \$25,995. On or about January 18, 2014, the Dealer sold this vehicle for \$304 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently reimbursed this purchaser \$304 plus HST.
8. On or before January 9, 2014, an advertisement was placed by or on behalf of the Dealer for a 2009 Dodge RAM 1500, Stock # 14-124A, with a sale price of \$25,995. On or about January 15, 2014, the Dealer sold this vehicle for \$304 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently reimbursed this purchaser \$304 plus HST.
9. On or before January 9, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Jeep Compass, Stock # U1382, with a sale price of \$19,995. On or

about January 3, 2014, the Dealer sold this vehicle for \$304 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently reimbursed this purchaser \$304 plus HST.

10. On or before January 9, 2014, an advertisement was placed by or on behalf of the Dealer for a 2012 Dodge Journey R/T, Stock # U1297, with a sale price of \$22,836. On or about January 18, 2014, the Dealer sold this vehicle for \$304 over the advertised price. As such the advertisement did not promote an all-inclusive price, contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently reimbursed this purchaser \$304 plus HST.

By failing to comply with the following regulation under the *Motor Vehicle Dealers Act, 2002, 333/08*:

Advertising

36.

(7) If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) the amount that a buy would be required to pay for the vehicle; and
- (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

Disclosure

42. Additional information in contracts of sale and leases.

(19) If the total costs of repairs to fix the damage caused to a motor vehicle by an incident exceed \$3,000, a statement to that effect and if the registered motor vehicle dealer knew the total costs, a statement of the total costs.

It is thereby agreed that the Dealer and Ordanis have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, programs and prices connected with those vehicles.

7. A registrant shall ensure that all documents used by the registrant in the course of trade in a motor vehicle are current and comply with the law.

9. In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$5,000. The first \$1000 of this fine is due within 30 days of the Discipline Committee Order and the remaining balance of \$4000 is due within 120 days of the date of the Discipline Committee Order.
2. Fletcher agrees to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The General Manager in charge of sales agrees to complete the course within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
4. The Dealer agrees to offer all future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 120 days of acceptance of this offer. Future sales staff will be offered the course within 120 days of being retained in this capacity by the Dealer. The Dealer will pay all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course or who are otherwise required to do so pursuant to the Act.
5. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer and Fletcher breached subsections 4, 7 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties' Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,000. The first \$1000 of this fine is due within 30 days of the Discipline Committee Order and the remaining balance of \$4000 is due within 120 days of the date of the Discipline Committee Order.
2. Fletcher is ordered to complete the OMVIC certification course ("course"), within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
3. The General Manager in charge of sales is ordered to complete the course within 120 days of the date of the Discipline Committee Order. The Dealer will pay all costs associated with this.
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5. The Dealer shall comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Catherine Poultney, Chair